

## OWNING THE MARKET

Fair Trade and Monopolies in Halacha

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*Long before the establishment of the Federal*

*Trade Commission, there were debates regarding trade regulations. Is the government responsible to protect consumers, or is it the responsibility of "buyer beware"? There is a plethora of government agencies that strive to produce rules and regulations to produce a fair economy.*

*In a Jewish court of law, can the Bais Din*

*interfere with the practices of free trade? How far does the Bais Din's jurisdiction reach, according to Halacha?*

Bais Din's Jurisdiction in the Marketplace

The *Gemara* discusses regulations in the marketplace and

concludes that it is the *Bais Din's* responsibility to ensure that the weights and

measures are accurate[1].

When it comes to price regulations, there is a disagreement in the *Gemara*, if the *Bais Din* should monitor pricing or not.

The *Rishonim* explain why it is not necessary to establish

safeguards for pricing in the marketplace[2]. In a fair and capitalized society, the market

creates its own fixed price. Based on

the rules of supply and demand, the price is determined to be fair.

Breaking the Monopoly

The opinion of *Karna* – one

of the *Amoraim* mentioned in that *Gemara* – is that we must worry about cheaters. He feels

that the exception to this fair pricing rule is if there is a monopoly. If one person holds his stock until all of his competitors are sold out, then he is the only option for the buyers. This could give him the leeway to price his wares as high as he wishes. In this case, the *Rambam***[3]** and

*Shulchan Aruch***[4]**, that

*Bais Din* has the right to appoint

officers to monitor the pricing.

The *Tur* adds a qualification to this rule, that *Bais Din*

may only get involved when there is a monopoly on items which are *chayei nefesh* – daily necessities. If the seller is driving up prices on food and basic staples, the *Bais Din* should appoint an officer but not for fancy clothes

and cars.

By

forcing someone to pay more than he intended for essential items, the seller is, in essence, stealing from the buyer. The buyer may be forced to pay for the

item, but he is not forgiving the extra sum to the seller[5].

However, if the seller is price gouging on luxury items, the *Bais Din* should not get involved.

### **The Esrog Mob**

In light of the above, let us examine the following case. In a town in Europe, there were two families that held a monopoly on the *Esrog* trade. Each year, these two families sold their *Esrogim* for a minimum of \$150. One year, the families decided to raise their prices to \$180 per *Esrog*. The townsfolk were very upset at the new rate, but they had no other source for buying *Esrogim*. They complained to their *Rabbanim*. The *Rabbanim* of the town asked a *Bais Din* if they were permitted to get involved in commerce by forcing the *Esrog* dealers to lower the price.

The first determination would be, whether an *Esrog* is considered to be *chayei nefesh*. If buying an *Esrog* is deemed a necessity, then according to the *Tur*, the *Bais Din* would be allowed to interfere and force the *Esrog* dealers to lower the price.

It would seem that an *Esrog* is deemed *chayei nefesh*. The townspeople are not buying it because they desire a citrus fruit, rather it is a *mitzvah* obligation. Therefore, the *Bais Din* would be permitted to interfere in the town's commerce. In truth we do not *pasken* like the *Tur* but rather like the *Mechaber* that does not differentiate between essential or luxury items. However, according to the above, the *Tur* would also agree by an *Esrog* that the *Rabbanim* can get involved in fair pricing.

### **Preventing Price Gouging**

How

far can the *Bais Din*

go to prevent the price inflation? Can they tell the people not to perform the *mitzvah*? There are similar cases in *Halacha*, where the supply of an item used for a *mitzvah* was put out of reach.

One

example was during the times of the earlier *Tzemach Tzedek*. The Jews used to go to the marketplace on *Erev Shabbos* to buy fish in honor of *Shabbos*. When the gentile fishermen realized this trend, they began raising the prices of the fish, because they knew the Jews would be forced to buy it. The Jews asked the *Tzemach Tzedek*

for advice, should they continue paying outrageous prices for fish for *Shabbos*?

The *Tzemach Tzedek* quoted by *Magen Av*[6] rules that the Jews should not buy fish at the higher rates. He cites an example from the *Mishna* in *Krisus*[7].

During the times of the *Bais HaMikdash*, a woman who gave birth was obligated to bring a *Korban* of two turtledoves. The gentiles raised the prices for the birds, making it exorbitantly expensive to bring the *Korban*.

There is a general rule, that the rabbis have the ability to nullify a *mitzvah*, to a certain degree, if the situation calls for it. Rabban Gamliel announced that the Jewish people should bring the bare minimum - which truncated the practice of *Korbanos*. This led to a fall in the sale of turtledoves, which eventually caused the price to go back down.

The *Hagahos Tzemach Tzedek* offered another proof from the following example. There is a *mitzvah* of *Pidyon Shvuyim* - to pay a ransom to save a life.

Indeed, one who saves a person's life has a great merit, and it is as if he saved an entire world. However, the *Mishna* says that we do not pay a large sum of money for ransom demands[8].

This is due to the fact, that if the gentiles realize that Jews are willing to pay, this will cause an increase in kidnappings and high ransom demands.

### **In Conclusion**

Does

the ruling of the *Tzemach Tzedek* apply to the case of costly *Esrogim*? Can *Bais Din* decide that no one should buy an *Esrog* until the price is lowered?

The *Hagahos Chasam Sofer* still opines that *Bais Din* is not able to do so.

There is a major difference, he explains, between the aforementioned examples and the case of

the expensive *Esrog*. While the *Mishna* does allow for the delaying of certain *mitzvos*, those are *mitzvos* which do not expire.

It is possible for a woman to delay bringing a *Korban* until the price of turtledoves is lowered. However, it is not possible to delay the *mitzvah* of shaking a *Lulav* and *Esrog*. Once *Sukkos* has passed, the *mitzvah*

opportunity is gone. The same with eating fish for the *mitzvah* of *Oneg Shabbos*.

Thus

we have a disagreement between the *Tzemach Tzedek* who says the *Rabbanim* have the power passively to prevent the performance of a *mitzvah* if this will lower the

price while the *Chasam Sofer* disagrees unless the *mitzvah* can wait and will not expire.

Furthermore,

there is a concept of "*hiddur mitzvah ad shlish*"[9].

This means that a person should pay extra to beautify a *mitzvah*, up to one third more than the value. Even

though the item is overpriced, it is worthwhile to overpay for the *mitzvah*. If the *Esrog* price is changed from

\$150 to \$180, that \$30 difference is below the one-third threshold, and one would be obligated to pay extra in order to fulfill the *mitzvah*. This would be another reason for the *Rabbanim* not to advise the townspeople to refrain from

doing the *mitzvah* in order to lower the price of the *Esrogim*.

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[1]

*Bava Basra, Daf 89A*

[2]

*Rashbam*

[3]

*Hilchos Geneiva 8:20*

[4]

C.M. 231:20

[5]

*Shu"t Galya Masechta, SIman 4*

[6]

242:1

[7]

*Daf 8*

[8]

*Gittin, Daf 45*

[9]

*Bais Hillel, 218*